

House _____ Amendment NO. _____

Offered By _____

1 AMEND Senate Substitute for Senate Committee Substitute for Senate Bill No. 114, Page 7, Section 316.150,
2 Line 18, by inserting after all of said section and line, the following:

3
4 "407.400. As used in sections 407.400 to 407.420:

5 (1) "Franchise" means a written or oral arrangement for a definite or indefinite period, in which a
6 person grants to another person a license to use a trade name, trademark, service mark, or related
7 characteristic, and in which there is a community of interest in the marketing of goods or services at
8 wholesale, retail, by lease, agreement, or otherwise[, including]; "franchise" specifically includes, but is not
9 limited to, a commercial relationship of definite duration or continuing indefinite duration, between a
10 "wholesaler", such wholesaler being a person as defined in this section, licensed pursuant to the provisions of
11 chapter 311 to sell at wholesale, intoxicating liquor, as defined in section 311.020, to retailers, duly licensed in
12 this state, and a "supplier", being a person engaged in the business as a manufacturer, distiller, rectifier or
13 out-of-state solicitor whose brands of intoxicating liquor are distributed through duly licensed wholesalers in
14 this state, and wherein a wholesaler is granted the right to offer, sell, and distribute within this state or any
15 designated area thereof such of the supplier's brands of intoxicating liquor, or all of them, as may be specified,
16 with or without the grant of a license to use a trade name, trademark, service mark, or related characteristic,
17 and whether or not there is a community of interest in the marketing of goods or services; except that, the term
18 "franchise" shall not apply to persons engaged in sales from warehouses or like places of storage, other than
19 wholesalers as above described, leased departments of retail stores, places of original manufacture, nor shall
20 the term "franchise" apply to a commercial relationship that does not contemplate the establishment or
21 maintenance of a place of business within the state of Missouri. As used herein "place of business" means a
22 fixed, geographical location at which goods, products or services are displayed or demonstrated for sale. It is
23 the general assembly's intent to make clear that this subdivision was correctly interpreted as set forth in the
24 Missouri cases of High Life Sales Company v. Brown-Forman Corporation, 823 S.W. 2d 493 (Mo. 1992) and
25 Brown-Forman Distillers Corp. v McHenry, 566 S.W. 2d 194 (Mo. 1978), rather than in Missouri Beverage
26 Company, Inc. v. Shelton Brothers, Inc., 796 F. Supp. 2d 988 (W.D. Mo. 2011), aff'd. 11-2456 (8th Cir.
27 February 28, 2012). Further, the general assembly declares that this subdivision was not correctly interpreted
28 in Missouri Beverage Company, Inc. v Shelton Brothers, Inc., 796 F. Supp 2d 988 (W.D. Mo. 2011), aff'd
29 11-2456 (8th Cir. February 28, 2012);

30 (2) The term "goods" includes any personal property, real property, or any combination thereof;

31 (3) The term "other property" includes a franchise, license distributorship, or other similar right,
32 privilege, or interest;

33 (4) The term "person" includes an individual, corporation, trust, estate, partnership, unincorporated
34 association, or any other legal or commercial entity;

35 (5) The term "pyramid sales scheme" includes any plan or operation for the sale or distribution of
36 goods, services or other property wherein a person for a consideration acquires the opportunity to receive a

Action Taken _____ Date _____

1 pecuniary benefit, which is not primarily contingent on the volume or quantity of goods, services, or other
 2 property sold or distributed or to be sold or distributed to persons for purposes of resale to consumers, and is
 3 based upon the inducement of additional persons, by himself or herself or others, regardless of number, to
 4 participate in the same plan or operation; and

5 (6) The term "sale or distribution" includes the acts of leasing, renting or consigning.

6 407.413. 1. If more than one franchise for the same brand or brands of intoxicating liquor is granted
 7 to different wholesalers in this state, it is a violation of sections 407.400 to 407.420 for any supplier to
 8 discriminate between the wholesalers with respect to any of the terms, provisions, and conditions of these
 9 franchises.

10 2. Notwithstanding the terms, provisions and conditions of any franchise, no supplier shall
 11 unilaterally terminate or refuse to continue or change substantially the condition of any franchise with the
 12 wholesaler unless the supplier has first established good cause for such termination, noncontinuance or
 13 change. This subsection does not apply to a "supplier", being a person engaged in the business as a
 14 manufacturer, distiller, rectifier, or out-of-state solicitor whose brands of intoxicating liquor are distributed
 15 through duly licensed wholesalers in this state who sells less than two thousand five hundred cases of distilled
 16 spirits in the state, or who sells less than ten thousand cases of wine in the state, the volume thresholds being
 17 measured for the twelve months immediately preceding the date on which the wholesaler receives notice of
 18 the termination, noncontinuance, or change, provided such supplier shall be obligated nevertheless, prior to
 19 the effective date of the termination, noncontinuance, or change, to pay to the wholesaler an amount equal to
 20 the fair market value of the distribution rights which will be lost or diminished by reason of the termination,
 21 noncontinuance, or change, including without limitation the actual laid in cost of any inventory on hand, and
 22 provided further that this exception shall only apply to a termination, noncontinuance or change concerning
 23 the category of intoxicating liquor (namely, distilled spirits or wine) that is less than the volume threshold set
 24 forth in this sentence. The exception in the preceding sentence shall not affect a supplier's obligation to
 25 satisfy the notice requirements set forth in section 407.405. For purposes of this subsection, "fair market
 26 value" shall be determined in accordance with the provisions of the written agreement, if any, between the
 27 supplier and wholesaler, or if the written agreement between them does not specify how fair market value is
 28 determined, then:

29 (1) For a supplier of wine who sells less than one thousand cases of wine in the state in the twelve
 30 months immediately preceding the date on which the wholesaler receives notice of the termination,
 31 noncontinuance, or change, "fair market value" shall be equal to the actual laid in cost of any inventory on
 32 hand plus two times the gross profit earned by the wholesaler in the twelve month period preceding the notice
 33 or twelve times the monthly average gross profit for the period of time the wholesaler served as a distributor
 34 for the supplier's products if such time period is less than twelve months, and "gross profit" shall mean net
 35 revenue less costs of goods sold, as calculated in accordance with generally accepted accounting principles;
 36 and

37 (2) For a supplier of wine who sells at least one thousand cases but less than ten thousand cases of
 38 wine in the state in the twelve months immediately preceding the date on which the wholesaler receives notice
 39 of the termination, noncontinuance, or change, and for a supplier of distilled spirits that sells less than two
 40 thousand five hundred cases of distilled spirits in the state in the twelve months immediately preceding the
 41 date on which the wholesaler receives notice of the termination, noncompliance, or change, "fair market
 42 value" shall be determined by agreement of the supplier and wholesaler, but if the parties cannot so determine
 43 within thirty days after the notice, then the matter shall be submitted to mandatory arbitration before a panel of
 44 three neutral arbitrators conducted pursuant to chapter 435 or the Federal Arbitration Act if the latter so
 45 applies, with the parties to the arbitration each to bear their own attorneys' fees and costs of the arbitration.

46 3. Any wholesaler may bring an action in a court of competent jurisdiction against a supplier for

violation of any of the provisions of this section and may recover damages sustained by such wholesaler together with the costs of the action and reasonable attorney's fees.

4. In any action brought by a wholesaler against a supplier for termination, noncontinuance or substantial change in violation of the provisions of this section, it is a complete defense for the supplier to prove that the termination, noncontinuance or change was done in good faith and for good cause.

5. As used in this section, "good faith" is the duty of each party to any franchise and all officers, employees or agents thereof to act in a fair and equitable manner towards each other, and "good cause" means the following:

(1) Failure by the wholesaler to comply substantially with the provisions of an agreement or understanding with the supplier, which provisions are both essential and reasonable;

(2) Use of bad faith or failure to observe reasonable commercial standards of fair dealing in the trade; or

(3) Revocation or suspension for more than thirty-one days of a beer wholesaler's federal basic permit or of any state or local license required of a beer wholesaler for the normal operation of its business.

6. As to brewers and beer wholesalers, the provisions of this section shall only apply to agreements entered into on or after August 28, 1998, and to agreements which are renewed or substantially amended on or after August 28, 1998. As used in the preceding sentence, "substantially amended" means a written amendment that materially alters the fundamental business relationship between brewer and wholesaler. "Substantially amended" does not include changes or amendments that are contemplated in writing by the parties to an agreement.

7. Notwithstanding any other provisions of law to the contrary, a supplier and a wholesaler of intoxicating liquor may negate, modify, waive, or vary the rights granted in this chapter through a written agreement between the supplier and the wholesaler.

AMEND Senate Substitute for Senate Committee Substitute for Senate Bill No. 114, Page 7, Section 316.150, Line 18, by inserting after all of said section and line, the following:

"407.400. As used in sections 407.400 to 407.420:

(1) "Franchise" means a written or oral arrangement for a definite or indefinite period, in which a person grants to another person a license to use a trade name, trademark, service mark, or related characteristic, and in which there is a community of interest in the marketing of goods or services at wholesale, retail, by lease, agreement, or otherwise[, including]; "franchise" specifically includes, but is not limited to, a commercial relationship of definite duration or continuing indefinite duration, between a "wholesaler", such wholesaler being a person as defined in this section, licensed pursuant to the provisions of chapter 311 to sell at wholesale, intoxicating liquor, as defined in section 311.020, to retailers, duly licensed in this state, and a "supplier", being a person engaged in the business as a manufacturer, distiller, rectifier or out-of-state solicitor whose brands of intoxicating liquor are distributed through duly licensed wholesalers in this state, and wherein a wholesaler is granted the right to offer, sell, and distribute within this state or any designated area thereof such of the supplier's brands of intoxicating liquor, or all of them, as may be specified, with or without the grant of a license to use a trade name, trademark, service mark, or related characteristic, and whether or not there is a community of interest in the marketing of goods or services; except that, the term "franchise" shall not apply to persons engaged in sales from warehouses or like places of storage, other than wholesalers as above described, leased departments of retail stores, places of original manufacture, nor shall the term "franchise" apply to a commercial relationship that does not contemplate the establishment or maintenance of a place of business within the state of Missouri. As used herein "place of business" means a fixed, geographical location at which goods, products or services are displayed or demonstrated for sale. It is the general assembly's intent to make clear that this subdivision was correctly interpreted as set forth in the

1 Missouri cases of High Life Sales Company v. Brown-Forman Corporation, 823 S.W. 2d 493 (Mo. 1992) and
 2 Brown-Forman Distillers Corp. v McHenry, 566 S.W. 2d 194 (Mo. 1978), rather than in Missouri Beverage
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 4 February 28, 2012). Further, the general assembly declares that this subdivision was not correctly interpreted
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7 (2) The term "goods" includes any personal property, real property, or any combination thereof;

8 (3) The term "other property" includes a franchise, license distributorship, or other similar right,
 9 privilege, or interest;

10 (4) The term "person" includes an individual, corporation, trust, estate, partnership, unincorporated
 11 association, or any other legal or commercial entity;

12 (5) The term "pyramid sales scheme" includes any plan or operation for the sale or distribution of
 13 goods, services or other property wherein a person for a consideration acquires the opportunity to receive a
 14 pecuniary benefit, which is not primarily contingent on the volume or quantity of goods, services, or other
 15 property sold or distributed or to be sold or distributed to persons for purposes of resale to consumers, and is
 16 based upon the inducement of additional persons, by himself or herself or others, regardless of number, to
 17 participate in the same plan or operation; and

18 (6) The term "sale or distribution" includes the acts of leasing, renting or consigning.

19 407.413. 1. If more than one franchise for the same brand or brands of intoxicating liquor is granted
 20 to different wholesalers in this state, it is a violation of sections 407.400 to 407.420 for any supplier to
 21 discriminate between the wholesalers with respect to any of the terms, provisions, and conditions of these
 22 franchises.

23 2. Notwithstanding the terms, provisions and conditions of any franchise, no supplier shall
 24 unilaterally terminate or refuse to continue or change substantially the condition of any franchise with the
 25 wholesaler unless the supplier has first established good cause for such termination, noncontinuance or
 26 change. This subsection does not apply to a "supplier", being a person engaged in the business as a
 27 manufacturer, distiller, rectifier, or out-of-state solicitor whose brands of intoxicating liquor are distributed
 28 through duly licensed wholesalers in this state who sells less than two thousand five hundred cases of distilled
 29 spirits in the state, or who sells less than ten thousand cases of wine in the state, the volume thresholds being
 30 measured for the twelve months immediately preceding the date on which the wholesaler receives notice of
 31 the termination, noncontinuance, or change, provided such supplier shall be obligated nevertheless, prior to
 32 the effective date of the termination, noncontinuance, or change, to pay to the wholesaler an amount equal to
 33 the fair market value of the distribution rights which will be lost or diminished by reason of the termination,
 34 noncontinuance, or change, including without limitation the actual laid in cost of any inventory on hand, and
 35 provided further that this exception shall only apply to a termination, noncontinuance or change concerning
 36 the category of intoxicating liquor (namely, distilled spirits or wine) that is less than the volume threshold set
 37 forth in this sentence. The exception in the preceding sentence shall not affect a supplier's obligation to
 38 satisfy the notice requirements set forth in section 407.405. For purposes of this subsection, "fair market
 39 value" shall be determined in accordance with the provisions of the written agreement, if any, between the
 40 supplier and wholesaler, or if the written agreement between them does not specify how fair market value is
 41 determined, then:

42 (1) For a supplier of wine who sells less than one thousand cases of wine in the state in the twelve
 43 months immediately preceding the date on which the wholesaler receives notice of the termination,
 44 noncontinuance, or change, "fair market value" shall be equal to the actual laid in cost of any inventory on
 45 hand plus two times the gross profit earned by the wholesaler in the twelve month period preceding the notice
 46 or twelve times the monthly average gross profit for the period of time the wholesaler served as a distributor

1 for the supplier's products if such time period is less than twelve months, and "gross profit" shall mean net
 2 revenue less costs of goods sold, as calculated in accordance with generally accepted accounting principles;
 3 and

4 (2) For a supplier of wine who sells at least one thousand cases but less than ten thousand cases of
 5 wine in the state in the twelve months immediately preceding the date on which the wholesaler receives notice
 6 of the termination, noncontinuance, or change, and for a supplier of distilled spirits that sells less than two
 7 thousand five hundred cases of distilled spirits in the state in the twelve months immediately preceding the
 8 date on which the wholesaler receives notice of the termination, noncompliance, or change, "fair market
 9 value" shall be determined by agreement of the supplier and wholesaler, but if the parties cannot so determine
 10 within thirty days after the notice, then the matter shall be submitted to mandatory arbitration before a panel of
 11 three neutral arbitrators conducted pursuant to chapter 435 or the Federal Arbitration Act if the latter so
 12 applies, with the parties to the arbitration each to bear their own attorneys' fees and costs of the arbitration.

13 3. Any wholesaler may bring an action in a court of competent jurisdiction against a supplier for
 14 violation of any of the provisions of this section and may recover damages sustained by such wholesaler
 15 together with the costs of the action and reasonable attorney's fees.

16 4. In any action brought by a wholesaler against a supplier for termination, noncontinuance or
 17 substantial change in violation of the provisions of this section, it is a complete defense for the supplier to
 18 prove that the termination, noncontinuance or change was done in good faith and for good cause.

19 5. As used in this section, "good faith" is the duty of each party to any franchise and all officers,
 20 employees or agents thereof to act in a fair and equitable manner towards each other, and "good cause" means
 21 the following:

22 (1) Failure by the wholesaler to comply substantially with the provisions of an agreement or
 23 understanding with the supplier, which provisions are both essential and reasonable;

24 (2) Use of bad faith or failure to observe reasonable commercial standards of fair dealing in the trade;
 25 or

26 (3) Revocation or suspension for more than thirty-one days of a beer wholesaler's federal basic permit
 27 or of any state or local license required of a beer wholesaler for the normal operation of its business.

28 6. As to brewers and beer wholesalers, the provisions of this section shall only apply to agreements
 29 entered into on or after August 28, 1998, and to agreements which are renewed or substantially amended on or
 30 after August 28, 1998. As used in the preceding sentence, "substantially amended" means a written
 31 amendment that materially alters the fundamental business relationship between brewer and wholesaler.
 32 "Substantially amended" does not include changes or amendments that are contemplated in writing by the
 33 parties to an agreement.

34 7. Notwithstanding any other provisions of law to the contrary, a supplier and a wholesaler of
 35 intoxicating liquor may negate, modify, waive, or vary the rights granted in this chapter through a written
 36 agreement between the supplier and the wholesaler."; and

37
 38 Further amend said bill, page 7, SEction 316.150, Line 18, by inserting after all of said section and
 39 line the following:

40
 41 "Section 1. Notwithstanding any other provisions of law to the contrary, a supplier and a wholesaler
 42 of intoxicating liquor may negate, modify, waive, or vary the rights granted in sections 407.400 to 407.420,
 43 through a written agreement between the supplier and the wholesaler. The provisions of this chapter shall
 44 apply only to agreements entered into between a supplier and a wholesaler on or after January 1, 2014, and to
 45 agreements which are renewed or substantially amended on or after January 1, 2014. As used in this section,
 46 the term "substantially amended" shall mean a written amendment that materially alters the fundamental
 47 business relationship between the supplier and the wholesaler, but shall not include changes or amendments

1 that are contemplated by the parties prior to an agreement."; and
2 "; and
3
4
5 Further amend said bill by amending the title, enacting clause, and intersectional references accordingly.